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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/606,410	06/25/2003	Bart Munro	2043.097US1	5665
49845 7590 09/30/2010 SCHWEGMAN, LUNDBERG & WOESSNER/EBAY P.O. BOX 2938 MINNEAPOLIS, MN 55402				
EXAMINER THERIAULT, STEVEN B				
ART UNIT		PAPER NUMBER		
2179				
NOTIFICATION DATE		DELIVERY MODE		
09/30/2010		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

USPTO@SLWIP.COM
request@slwip.com

**Advisory Action
Before the Filing of an Appeal Brief**

Application No. 10/606,410	Applicant(s) MUNRO ET AL.
Examiner STEVEN B. THERIAULT	Art Unit 2179

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 14 September 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 33-54.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Steven B Theriault /
Primary Examiner
Art Unit: 2179

Continuation of 11, does NOT place the application in condition for allowance because: applicant's arguments have been reviewed along with the prior art and the arguments are not persuasive. First, applicant is reminded that with a 103 rejection that MPEP 2123 and 2144 apply as well as MPEP 2111, which in summary means that the references are available to the skilled artisan for all they contain and suggest including the non-preferred embodiments and that the claims are to be interpreted as to their plain meaning where the meaning is consistent to one of ordinary skill in the art and with the specification. In this case, the applicant's argument appears to be that the final rejection did not mention the limitations of the independent claims where each claim recites "receive[] a first selection from the user via the first search interface, the first selection indicating the first search criteria as selected for inclusion in the first search query and indicating the second search criteria as deselected from inclusion in the first search query" and that excluding results is not the same as "deselecting from inclusion". The present application specification Para 38, 44 and 49 and Fig 5-6 appear to show evidence that the selection and deselect ion is performed by the user by selecting or deselecting a check box or attributes from a search interface to include or deselect from inclusion within the interface. The independent claims are silent as to a check box and simply recite "receiving user input" which allows for a broad interpretation as to how input can be entered in an interface. In contrast to applicant's argument that the final rejection did not address the feature in the rejection, a review of the final shows that the examiner on page 3, middle and bottom that a first and second interface are described in column 5, lines 1-67, NOT operation, column 16, lines 1-5, and column 19, lines 1-42, col. 17, lines 5-51 and col. 20, lines 55-67). Fishkin teaches multiple layers where each layer is a search interface. Nonetheless, on page 4, the examiner relies on the suggestion in Fishkin that the queries can be "virtually any query". Fishkin column 19, refers to figure 6a that states the user may manipulate selectors and observe the filtering effect on the data. The user can move the VOR filters to visually generate complex queries where each filter can include, sliders and Boolean selectors. Therefore, a first interface is a first VOR, shown in Figure 5, and a second interface is a second VOR placed over the first shown in Fig. 6a and 6b. The rejection states that Fishkin does not specifically include a feature indicating a second criteria is deselected from inclusion in the first query (See page 4). To wit, applicant argues the examiner did not reject the limitation but it appears on the bottom of page 4. Moreover, the examiner relied on Fowler Fig 3a-3b and 5-7 and Para 40-41 and 44,45 and 49 for the missing limitation as shown on page 5 of the rejection. In figure 3b the user makes a selection via a drop down box to enter a action for a "search criteria" where the user can select exclude for a given search string to sift search results. Therefore, not only has the rejection appeared to address the limitations, the prior art appears to teach a consistent feature of entering and deselecting search results to be executed with a search query. Thus, the claims remain rejected over the final rejection mailed 07/15/2010. .